

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
(240) 777-6600

**Case No. S-1550**

**PETITION OF EXXON COMPANY, USA**

**RESOLUTION TO REQUIRE COMPLIANCE AND SUSPEND SPECIAL  
EXCEPTION**

(Resolution Adopted July 10, 2002)  
(Effective Date of Resolution: July 16, 2002)

**EVIDENCE PRESENTED**

1. Based upon an inspection report and Notice of Violation issued by Stanley N. Garber, Zoning Investigator, Montgomery County Department of Permitting Services, on June 12, 2002, the Board of Appeals convened a Show Cause hearing on the above-captioned special exception. Following the Show Cause hearing, on June 28, 2002 the Board issued a Resolution imposing several conditions upon the special exception holder and stating that the hearing would be reconvened.
2. On July 10, 2002 the Board of Appeals reconvened the Show Cause hearing in Case No. S1550, Petition of Exxon, Company USA. Jon Hoppe, Esquire, appeared on behalf of the College Plaza station operator, Mr. Kahn. Jody Kline, Esquire, appeared on behalf of Exxon-Mobil Corporation. Stanley N. Garber, Zoning Investigator, Montgomery County Department of Permitting Services also appeared and testified.
3. The subject property is Lots P296 and P299, located at 15211 Frederick Avenue, Rockville, Maryland, in the I-1 Zone.
4. Mr. Garber stated that he re-inspected the subject property on July 8, 2002. He submitted photographs into the record as Exhibit Nos. 29(c)(1), 29(d)(1), 29(e)(1) and 29(f)(1) which he said depict signs on the property which lack required permits. Mr. Garber also stated that not all of the plantings required in Exhibit No. 24(b) in the record have been installed, and that he observed double stacked parking on the site in the area for which the site plan depicts eight parking spaces.

5. Mr. Hoppe submitted a series of sign and building permits into the record as Exhibit No. 35. None of these permits pertains to the signs depicted in Exhibit Nos. 29(c)(1), 29(d)(1), 29(e)(1) and 29(f)(1). Mr. Hoppe stated that the presence of some of the signs on the property is due to a misunderstanding on Mr. Kahn's part as to what he is required to do.

6. Mr. Kline presented Exxon's position that the area inside the station referred to at the June 12, 2002 Show Cause hearing is not a convenience store, but an enhanced vending area. Mr. Kline stated that Exxon Corporation authorized the dealer to install the enhanced vending area provided that he fully complied with local laws. Mr. Kline further stated that the income from the vending area all goes to the station operator and is subordinate as a percentage of the income derived from gasoline sales and service at the four-bay station. The enhanced vending area was created entirely as an interior renovation. No exterior walls were moved and no service bays were converted to vending space. Mr. Kline stated that therefore, Exxon did not believe that a modification to the special exception would be required.

## FINDINGS OF THE BOARD

Section 59-G-1.3(e)(3) of the Montgomery County Zoning Ordinance provides, pertaining to the scope of show cause hearings:

*The notice of show cause hearing must state in detail the nature of the complaints received concerning the operation of the special exception and/or the nature of the alleged violations reported by the Department, and must state that the hearing is limited to a consideration and a determination of the validity of the allegations.*

Section 59-G-1.3(e)(6) of the Zoning Ordinance provides, pertaining to Board action following a show cause hearing:

*...The Board by the affirmative vote of at least 4 members, may reaffirm or revoke the special exception, or amend, ~~ad to,~~ delete or modify the existing terms or conditions of the special exception.*

Deleted: a

The Board finds that the issue which remains unresolved and which is noted both in the Department's allegations and the Board's Notice of the ~~show~~ *cause* hearing, is the ongoing presence on the site of signs without permits [See Evidence Presented, paragraph 4]. The Board finds that the nearly two year duration of the violations on the subject property constitute an egregious violation of the terms and conditions of the special exception.

Deleted: Show Cause

The Board finds that the following issues which are of great concern to the Board have come to light in the course of the show cause proceeding and are beyond the scope of this show cause proceeding:

- compliance of on-site parking with the requirements of the special exception,
- compliance of on-site landscaping with the requirements of the special exception;
- whether the newly renovated area of the station is a Convenience Food and Beverage Store as defined in Section 59-A-2.1 of the Zoning Ordinance, installation of which would require modification of the special exception.

The Board notes that it looks to the Department of Permitting Services for advice regarding corrective action for conditions or activities on a special exception site which may not comply with the requirements of Section 59-G of the Zoning Ordinance.

Therefore, on a motion by Louise L. Mayer, seconded by Allison Ishihara Fultz, with Angelo M. Caputo, Donna L. Barron and Donald H. Spence, Jr., Chairman in agreement, the Board adopted the following Resolution:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that operation of the automobile filling station permitted in Case No. S-1550, Petition of Exxon Company, USA is suspended for 30 days from the effective date of this Resolution; and

**BE IT FURTHER RESOLVED** by the Board of Appeals for Montgomery County Maryland that the special exception holder must either obtain permits for all signs which lack required permits or remove those signs immediately; and

**BE IT FURTHER RESOLVED** by the Board of Appeals for Montgomery County Maryland that, pursuant to Section 59-G-1.3(a)(3) and (4) of the Zoning Ordinance, the Board requests that the Department of Permitting Services conduct another inspection of the subject property and provide the Board with a report of its findings and recommendations regarding compliance of on-site parking with the requirements of the special exception, compliance of on-site landscaping with the requirements of the special exception, and whether the newly renovated area of the station is a Convenience Food and Beverage Store as defined in Section 59-A-2.1 of the Zoning Ordinance, installation of which would require modification of the special exception.

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Donald H. Spence, Jr.  
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
This 16<sup>th</sup> day of July, 2002.

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Katherine Freeman  
Executive Secretary to the Board

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.